Supreme Court, U.S.
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No. 93-683

In The

Supreme Court of the United States

October Term, 1993

SECURITY SERVICES, INC., f/k/a
RISS INTERNATIONAL CORPORATION,

Petitioner,

v.

GARVEY CORPORATION
and
INDIA TEXIMPOR, INC.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

RESPONDENTS' REPLY TO PETITION FOR WRIT OF CERTIORARI

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February 3, 1994

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QUESTION PRESENTED

Where a carrier's participation in the Household Goods Carriers' Bureau Mileage Guide Tariff was cancelled, is the carrier's continued use of that tariff a violation of the filed rate doctrine?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, the denial of the petition for rehearing, and the decision of the United States District Court for the District of New Jersey all appear as Appendices in the Petition for Certiorari.

STATEMENT OF THE CASE

This case involves undercharge actions filed by Security Services, Inc. (hereinafter "Security" or "Riss") against Garvey Corporation and India Teximpor, Inc. Both Respondents filed motions for summary judgment with the District Court for the District of New Jersey. The District Court held that the tariffs upon which the Trustee based his undercharge claims referred to the Household Goods Carriers' Bureau ("HGB") Mileage Guide Tariff for distances. However, since Riss did not execute a power of attorney to participate in the HGB, the District Court held that Riss' tariff was void as a matter of law relying on *Jasper Wyman & Son, et al. – Petition for Declaratory Order – Certain Rates and Practices of Overland Express, Inc.*, No. 40510, 8 I.C.C.2d 246 (1992) and *Freightcor Services, Inc. v. Vitro Packaging, Inc.*, No. 91-1507 (5th Cir. June 26, 1992), *withdrawn and op. replaced on reh'g*, 969 F.2d 1563 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 979 (1993). The District Court entered judgment on September 30, 1992 and October 23, 1992 for Respondents, respectively. The Trustee filed notices of appeal and the Third Circuit Court of Appeals consolidated the two cases upon its own motion on April 16, 1992. The Third Circuit affirmed the District Court based on its earlier opinion in *Security Services, Inc. v. K Mart Corporation*, No. 92-1833, subsequently reported at 996 F.2d 1516 (3rd Cir. 1993). The Third Circuit entered judgment on June 23, 1993, and subsequently denied rehearing on August 2, 1993.

REASONS FOR GRANTING THE WRIT

The Issue Herein Is Identical To The Issue In *K MART*

This Court's recent acceptance of *Security Services, Inc. v. K Mart* presents the same issue in the case at bar. *Security Services, Inc. v. K Mart*, 996 F.2d 1516 (3rd Cir. 1993), *cert. granted*, 62 U.S.L.W. 3287 (Oct. 18, 1993) (No. 93-284). Respondents agree with Petitioner that this Court should grant *certiorari* in this case, but stay all briefing until the Court issues its opinion in *Security Services, Inc. v. K Mart* scheduled for oral argument on February 28, 1994.

CONCLUSION

For the foregoing reasons, the Petition of Security Services should be granted and a Writ of Certiorari issued to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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